

STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF MINING, LAND, AND WATER

**FINAL FINDING AND DECISION**

of a  
Land Offering in the Kenai Peninsula Borough  
**Captain Cook North Subdivision – ADL 233106**  
*AS 38.05.035(e), AS 38.05.045*

and its  
**RELATED ACTION:**  
**Amendment to the Kenai Area Plan**  
*AS 38.04.065*  
**Land Classification Order**  
*AS 38.04.065 and AS 38.05.300*  
**Mineral Order 1215 (Closing)**  
*AS 38.05.185 and AS 38.05.300*

This Final Finding and Decision (FFD) complements and updates the Preliminary Decision (PD) dated February 20, 2020. The PD (attached) and related actions have had the required public review.

**I. Recommended Action(s)**

The State of Alaska, Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), Land Sales Section (LSS) recommends offering for sale State-owned land for private ownership within the Captain Cook North Subdivision project area (ADL 233106), as described in the PD. Surveyed parcels will be offered for future sale by a method under *AS 38.05.045 Generally*.

For the purposes of providing land for settlement in the Captain Cook North Subdivision project area, DNR may develop a subdivision of no more than 25 parcels. This project area is located within the Kenai Peninsula Borough (KPB) and therefore survey, platting, and access to and within the project area will be subject to the relevant subdivision standards. The project may be subdivided and offered in multiple stages.

There are three related actions with this proposal:

Amendment to the Kenai Area Plan: DNR proposes to amend the Kenai Area Plan (KAP) to change the designation of Unit 164A from Recreation and Tourism – Public Use Site to Settlement. The amendment will also replace the management intent for Unit 164A with: “This unit is appropriate for land sale offering.”

Land Classification Order: In relation to the Area Plan Amendment, DNR proposes to reclassify Unit 164A in a Land Classification Order from Public Recreation land to Settlement land.

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Mineral Order: DNR DMLW proposes to close the project area to new mineral entry through Mineral Order (MO) 1215.

Public notice for these related actions was conducted concurrently with the notice for the primary action's PD.

### **II. Authority**

DNR has the authority under *AS 38.05.045 Generally* to sell State-owned land if, on preparation and issuance of a written finding, it is determined to be in the best interest of the State, as required by *AS 38.05.035(e) Powers and Duties of the Director*. Article VIII, Section 1, of the Constitution of the State of Alaska provides: "It is the policy of the State to encourage the settlement of its land and development of its resources by making them available for maximum use consistent with the public interest." In addition, if it is deemed appropriate, DNR has the authority to develop and offer parcels larger than 5 acres under the allowances listed in *AS 38.04.020 (h) Land Disposal Bank*.

For related actions, *AS 38.04.065 Land Use Planning and Classification*, *AS 38.05.300 Classification of Land*, and *AS 38.05.185 Generally* allow for amendments and special exceptions to area plans, land classifications, and mineral orders.

### **III. Public Participation and Input**

All State requirements for public notice and public comment input have been met as covered in detail in **Section V. Summary of Public Notice and Comments**. Further information may lead to alterations of design of this project within the parameters set forth through this decision. Should this project move forward with State approval, final subdivision design and survey will be completed by an Alaska licensed surveyor. The surveyor will submit a platting application including a preliminary plat to the local platting authority prior to survey. This process will be subject to KPB ordinances and codes. During the process the public will have opportunity at the local level to provide additional comment and feedback prior to final establishment of lot corners and monuments.

Subdivision design will be submitted to the KPB platting authority for review in accordance with Title 20 *Subdivisions* of their ordinance.

Section 20.25.090 *Notice* provides the requirements for notification of affected property owners,

Section 20.25.100 *Approval – Commission Authority – Notification Required* provides, in part, that "Within 60 days from the date of acceptance by the planning director of the preliminary plat, the commission shall determine if the preliminary plat complies with the provisions of law and this chapter, and shall approve, conditionally approve, or disapprove the plat."

### **IV. Traditional Use Findings**

In accordance with *AS 38.05.830 Land Disposal in the Unorganized Borough*, a Traditional Use Finding is required for project areas within the Unorganized Borough. This project area is within an organized borough; therefore, no Traditional Use Finding is required.

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### V. Summary of Public Notice and Comments

Pursuant to *AS 38.05.945 Notice*, public notice inviting comment appeared on the State of Alaska Online Public Notices website at <https://aws.state.ak.us/OnlinePublicNotices/> and was posted on the DNR DMLW LSS website at [http://dnr.alaska.gov/mlw/landsale/public\\_notice/](http://dnr.alaska.gov/mlw/landsale/public_notice/) for the entire public notice period.

Notification and decision copies were sent directly to area state legislators and to multiple state agencies. Public notice was sent to other interested entities including landowners in the vicinity of the offering; additionally, parties were notified via the DNR Land Sales subscribers lists by email. Information was also posted to Twitter and Facebook. Notices were mailed to the KPB per *AS 38.05.945(c)(1)*, as well as Cook Inlet Regional Corporation per *AS 38.05.945(c)(2)-(3)*. Additionally, notices and a request to post were sent to postmasters and librarians in the vicinity of the offering.

The public notice stated that written comments were to be received by 5:00PM, March 26, 2020 in order to ensure consideration and eligibility to appeal. For more information, refer to the PD.

DNR DMLW LSS received comments from three State of Alaska agencies and two private individuals. All written comments received during the public comment period are summarized below.

DNR State Pipeline Coordinator's Section (SPCS) comment: SPCS requested that the Nikiski Alaska Pipeline ROW and 300-foot utility corridor be retained in State ownership as described in the PD. Additionally, SPCS requested to be included in the review of the survey, and that LSS consult with Tesoro Alaska Pipeline Company during the design of the subdivision.

DNR DMLW LSS Response: LSS appreciates the review and comments submitted. As noted in the PD, LSS will retain the 300-foot corridor and will continue to consult with LSS and Tesoro throughout the development process.

Two State of Alaska agencies, the Department of Transportation and Public Facilities and the Mental Health Trust Land Office submitted comments of non-objection.

DNR DMLW LSS Response: LSS appreciates your review.

Individual comment: The commenter requested to open part of the proposed land being considered for sale to the recreational cabin staking process. The commenter noted that there are several setnetters that have been setnetting the adjoining beaches for years, have an economic vested interest in the area, and would like an opportunity to stake cabin sites close to their fishing grounds.

DNR DMLW LSS Response: Thank you for your comments. The Captain Cook North project area is not well suited to a Remote Recreational Cabin Sites (RRCS) offering. RRCS offering areas require much larger areas wherein multiple successful applicants may select a parcel which suits their needs, with enough space to minimize staking conflicts and provide for generally low-density development. The Captain Cook North project area is too small to meet this criteria and allow for enough parcels to provide an economically feasible RRCS offering.

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Additionally, both the RRCS program and the subdivision sales program require that the lands be offered to all Alaska residents equally. There would be no guarantee that the nearby setnetters would be awarded a staking opportunity. LSS welcomes the setnetters to participate in the offering, if the project proceeds to that step.

Individual comment (summarized): The commenter noted that they operate a commercial fishing site near the area, and recreate within the area. The commenter was in agreement with the designation change of Unit 164A from Recreation and Tourism-Public Use Site to Settlement, but expressed concern with the DOF recommendations of the timber sale to remove dead, dying, and spruce beetle-susceptible white spruce over 8 inches; and recommended that a condition of sale should be to require the new owners to harvest these trees and to comply with the Firewise Alaska recommendations. The commenter noted that most remote cabins rely on burning wood for a heat source and most land owners would want to have these trees for their use.

DNR DMLW LSS Response: LSS appreciates the review and comments submitted. LSS does not have the authority or a mechanism for managing or enforcing Firewise recommendations on parcels sold. The dead or dying timber creates a high fire risk for the area and removing this timber in advance of a sale would assist in reducing this risk, while providing some economic benefit to the State. If LSS is not able to remove the dead or dying timber prior to sale, offering materials will inform potential purchasers of the high fire risk, and recommend removal of these trees.

## **VI. Modifications to Decision and/or Additional Information**

The recommended actions have not been modified from the original proposed actions described in the Preliminary Decision.

Recommendation and Approval of the Final Finding and Decision follow.

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**VII. Final Finding and Decision**

The Department recommends proceeding with the action as described in the Preliminary Decision. This action is undertaken under relevant authorities. Offering these parcels for sale will help meet the State’s goal to provide land for settlement for sale to the public and raise revenue for the State.

The findings presented above have been reviewed and considered. Public Notice has been accomplished in accordance with *AS 38.05.945 Notice* and comments received were considered. The project file has been found to be complete and the requirements of all applicable statutes have been satisfied. The actions are consistent with constitutional and statutory intent for State-owned land and this action is undertaken under relevant authorities.

Under the authority of the applicable statutes, it is hereby found to be in the best interest of the State of Alaska to proceed with the recommended action(s) as described and referenced herein.

[signature on file]  
Recommended by: Timothy Shilling  
Natural Resource Manager  
Land Sales Section  
Division of Mining, Land, and Water  
Department of Natural Resources  
State of Alaska

04/16/2020  
Date

[signature on file]  
Approved by: Martin W. Parsons  
Director  
Division of Mining, Land, and Water  
Department of Natural Resources  
State of Alaska

04/22/2020  
Date

[signature on file]  
Approved by: Corri A. Feige  
Commissioner  
Department of Natural Resources  
State of Alaska

04/27/2020  
Date

### **Reconsideration Provision**

A person affected by this decision who provided timely written comment or public hearing testimony on the preliminary decision may request reconsideration, in accordance with *11 AAC 02*. Any reconsideration request must be received within 20 calendar days after the date of "issuance" of this decision, as defined in *11 AAC 02.040(c) and (d)* and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7<sup>th</sup> Ave., Ste. 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918; or sent by electronic mail to [dnr.appeals@alaska.gov](mailto:dnr.appeals@alaska.gov). Under *11 AAC 02.030*, appeals and requests for reconsideration filed under *11 AAC 02* must be accompanied by the fee established in *11 AAC 05.160(d)(1)(F)*, which has been set at \$200 under the provisions of *11 AAC 05.160 (a) and (b)*.

If reconsideration is not requested by that date or if the commissioner does not order reconsideration on their own motion, this decision goes into effect as a final order and decision on the 31st calendar day after the date of issuance. Failure of the commissioner to act on a request for reconsideration within 30 calendar days after issuance of this decision is a denial of reconsideration and is a final administrative order and decision for purposes of an appeal to Superior Court. The decision may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. An eligible person must first request reconsideration of this decision in accordance with *11 AAC 02* before appealing this decision to Superior Court. A copy of *11 AAC 02* may be obtained from any regional information office of the Department of Natural Resources.